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Defendant bought a mill dam which had been constructed forty-eight years before. Plaintiff asks that damages caused to his land by flowing of the dam be assessed. *Held*, that though the dam was constructed across a navigable stream without authority from the legislature, a prescriptive right might have been acquired as against private owners, but since the injury done to the land of the plaintiff had not been as great during the entire prescriptive period as at the time the action was brought, no such prescriptive right had been acquired.

If this is law there are very few good prescriptive rights in existence. A nuisance arising from the pollution of a stream, in order to acquire a prescriptive right, would have to be maintained every day of the week and at all hours of night and day for the requisite period. We conceive the law to be that a nuisance acquires a prescriptive right against individuals when it has been brought about for the requisite period by a business operated in the *natural* and *usual* way to accomplish the ends for which it was established. If the twentieth season after the building of the dam was a dry one, this does not destroy the greater prescriptive right acquired during the first season, which may have been a wet one. Indeed, the substantial increase of injury may be actionable, but it does not take away the previously acquired right. See *Sherlock v. Louisville, &c., R. R. Co.*, 115 Ind. 22.

REIMBURSEMENT OF EXECUTORS.—IN RE MCKAY'S ESTATE, 68 N. Y. Sup. 925.—Executors in good faith paid off a mortgage when, by 1 Rev. St. p. 749, sec. 4, the land should have passed to the legatees subject to the incumbrance. *Held*, that the executors were entitled to reimbursement out of any funds held by them or the testamentary trustees, for the benefit of the residuary legatee.

This seems to be the first case on this point of law under the statute.

NEW TRIAL—JUDGMENT BY DEFAULT—MERITORIOUS DEFENSE—NEGLIGENCE OF COUNSEL.—DENSERAW V. SAILLANT, 48 Atl. 668 (R. I.).—Defendant showed by affidavit that he had a probable defense, but that through the negligence of his counsel in failing to appear, judgment by default was rendered against him. *Held*, defendant was entitled to a new trial.

It is not the policy of courts to grant a new trial under such circumstances. *Donnelly v. McAdams*, 13 Atl. 108. In New Jersey by statute (2 Gen. St., p. 2597, sec. 324) a judgment will be opened where injury results to one through the neglect or mistake of his attorney in failing to file a plea.

NEWSPAPERS—REFUSAL TO SELL TO DEALERS—RIGHT OF ACTION.—COLLINS V. AMERICAN NEWS CO., 63 N. Y. Supp. 638.—A complaint in an action by a newsdealer, alleging that an association of publishers of certain New York papers had agreed to cut off his supply unless he desisted from distributing, with the newspapers, circulars calculated to make him a competitor with the newspapers in the business of advertising, does not constitute a cause of action.

From the evidence it would seem that defendants do not propose to interfere with plaintiff's business, but merely refuse to aid him in injuring their own advertising business. No one can be compelled to sell his goods or labor to one with whom he does not wish to deal, merely because his refusal to do so may cause loss to him who wants them. *Allen v. Flood* (1898), App. Cas. 1; *Reynolds v. Associations*, 63 N. Y. Supp. 303.